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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF SEATTLE,

Defendant.

NO.

CONSENT DECREE

RE: TERMINAL 30 SITE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Port of Seattle (Defendant) under this Decree is to provide for remedial action at
4 a facility where there has been a release or threatened release of hazardous substances. This
5 Decree requires Defendant to perform final cleanup of the Terminal 30 Site in Seattle,
6 Washington. The final cleanup includes the installation and operation of an air sparging/soil
7 vapor extraction (AS/SVE) treatment system, the recovery of light non-aqueous phase liquid
8 (LNAPL), and the performance of reporting and monitoring activities.

9 B. Ecology has determined that these actions are necessary to protect human health
10 and the environment.

11 C. The Complaint in this action is being filed simultaneously with this Decree. An
12 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
13 However, the Parties wish to resolve the issues raised by Ecology’s Complaint. In addition,
14 the Parties agree that settlement of these matters without litigation is reasonable and in the
15 public interest, and that entry of this Decree is the most appropriate means of resolving these
16 matters.

17 D. By signing this Decree, the Parties agree to its entry and agree to be bound by
18 its terms.

19 E. By entering into this Decree, the Parties do not intend to discharge non-settling
20 parties from any liability they may have with respect to matters alleged in the Complaint. The
21 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
22 sums expended under this Decree.

23 F. This Decree shall not be construed as proof of liability or responsibility for any
24 releases of hazardous substances or cost for remedial action nor an admission of any facts;
25 provided, however, that Defendant shall not challenge the authority of the Attorney General
26 and Ecology to enforce this Decree.

1 G. The Court is fully advised of the reasons for entry of this Decree, and good
2 cause having been shown:

3 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

4 **II. JURISDICTION**

5 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
6 to the Model Toxics Control Act (MTCA), RCW 70.105D.

7 B. Authority is conferred upon the Washington State Attorney General by
8 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
9 after public notice and any required hearing, Ecology finds the proposed settlement would lead
10 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
11 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

12 C. Ecology has determined that a release or threatened release of hazardous
13 substances has occurred at the Site that is the subject of this Decree.

14 D. Ecology has given notice to Defendant of Ecology's determination that
15 Defendant is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

16 E. The actions to be taken pursuant to this Decree are necessary to protect public
17 health and the environment.

18 F. This Decree has been subject to public notice and comment.

19 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
20 hazardous substances at the Site in compliance with the cleanup standards established under
21 RCW 70.105D.030(2)(e) and WAC 173-340.

22 H. Defendant has agreed to undertake the actions specified in this Decree and
23 consents to the entry of this Decree under MTCA.

24 **III. PARTIES BOUND**

25 This Decree shall apply to and be binding upon the Parties to this Decree, their
26 successors and assigns. The undersigned representative of each party hereby certifies that he

1 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
2 comply with this Decree. Defendant agrees to undertake all actions required by the terms and
3 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's
4 responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents,
5 contractors, and subcontractors retained to perform work required by this Decree, and shall
6 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
7 this Decree.

8 **IV. DEFINITIONS**

9 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
10 WAC 173-340-200 shall control the meanings of the terms in this Decree.

11 A. Site: The Site is referred to as Terminal 30 (T30) and is generally located at
12 1901 East Marginal Way South, Seattle, Washington, approximately one mile southwest of
13 downtown Seattle, in King County, Washington on the shoreline of the East Waterway. The
14 Site is defined by the extent of contamination caused by the release of hazardous substances,
15 more particularly described in the Site Diagram (Exhibit A). The Site constitutes a facility
16 under RCW 70.105D.020(8).

17 B. Parties: Refers to the State of Washington, Department of Ecology and the Port
18 of Seattle.

19 C. Defendant: Refers to the Port of Seattle.

20 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
21 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
22 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

23 **V. FINDINGS OF FACTS**

24 Ecology makes the following findings of fact without any express or implied
25 admissions of such facts by Defendant.
26

1 A. The Site is located at 1901 East Marginal Way South, Seattle, Washington,
2 approximately one mile southwest of downtown Seattle, in King County, across the East
3 Waterway from Harbor Island. The Site location is depicted in Exhibit A. The facility is
4 depicted in Exhibit A. The Site is listed on the Department of Ecology’s Cleanup Sites List as
5 “Port of Seattle Terminal 30” with the Facility Site ID No. 2055.

6 B. The Defendant is the owner of the Site, and has owned the Site continuously
7 since 1985. Since 1905, a Chevron bulk fuel terminal occupied a portion of T30. The Chevron
8 bulk fuel terminal consisted of above-ground fuel storage tanks and associated piping and
9 equipment. The Port purchased T30 from Chevron on January 2, 1985. The fuel terminal was
10 demolished between December 1984 and about November 1985. The Port redeveloped the
11 33.9 acre Terminal 30 as a container facility.

12 C. Since the early 1990s, petroleum contamination caused by releases at the former
13 Chevron bulk fuel terminal has been the subject of a number of investigations and interim
14 actions.

15 D. A product recovery system was installed in the 1980s that removed more than
16 171,000 gallons of petroleum product. As part of the redevelopment in 2007, a site-wide
17 asphalt cover was constructed, and more than 24,000 cubic yards of petroleum-impacted soil
18 were disposed of offsite. However, substantial petroleum product remained in the soil and
19 groundwater at the Site.

20 E. The primary contaminants identified in soil and groundwater are:

21 **Petroleum Hydrocarbons**

- 22 • Diesel-Range Organics
 - 23 • Gasoline-Range Organics
 - 24 • Oil-Range Organics
 - 25 • BTEX: Benzene, Toluene, Ethylbenzene, Xylenes (total)
- 26

1 **Semi-Volatile Organic Compounds**

- 2 • 2-methylnapthalene

3 **Polynuclear Aromatic Hydrocarbons (PAHs)**

4 F. As required by the 1991 Agreed Order (AO), a draft Remedial
5 Investigation/Feasibility Study (RI/FS) was developed in 1998 by GeoEngineers (1998 RI/FS)
6 to document the nature and extent of contamination and to evaluate remedial alternatives.
7 Ecology did not approve the draft RI/FS.

8 G. A draft final RI/FS was prepared by Pacific Groundwater Group (PGG) in 2013
9 to update the status of petroleum contamination at the site, to identify a preferred final remedial
10 action, and to fulfill the requirements of the 1991 AO.

11 H. Section V of the 1991 AO was amended on October 23, 2013, such that the Port
12 would prepare and submit a draft Cleanup Action Plan (dCAP) for Ecology review and
13 approval.

14 I. All requirements under the 1991 AO, as amended, have been completed to
15 Ecology's satisfaction.

16 **VI. WORK TO BE PERFORMED**

17 This Decree contains a program designed to protect human health and the environment
18 from the known release, or threatened release, of hazardous substances or contaminants at, on,
19 or from the Site.

20 A. The defendant shall perform a cleanup action at the Site by implementing the
21 Cleanup Action Plan (CAP) (Exhibit B), which establishes the required remedial actions at the
22 Site in accordance with the Scope of Work and Schedule (Exhibit C) and all other
23 requirements of this Decree. The CAP, and Scope of Work and Schedule are incorporated by
24 reference and form an integral and enforceable part of this Decree. These remedial actions
25 include implementing air sparging/soil vapor extraction (AS/SVE) treatment in the Sheen Area
26 in the vicinity of monitoring wells (going south to north) MW-36, MW-39, and MW-42; light

1 non-aqueous phase liquid (LNAPL) recovery and AS/SVE treatment in the vicinity of RW-12
2 and MW-59; and confirmation, performance, and compliance monitoring.

3 B. Defendant agrees not to perform any remedial actions outside the scope of this
4 Decree unless the Parties agree to modify the CAP (Exhibit B) and Scope of Work and
5 Schedule (Exhibit C) to cover these actions. All work conducted by Defendant under this
6 Decree shall be done in accordance with WAC 173-340 unless otherwise provided herein.

7 C. All plans or other deliverables submitted by the Port of Seattle for Ecology's
8 review and approval under the CAP (Exhibit B) and Scope of Work and Schedule (Exhibit C)
9 shall, upon Ecology's approval, become integral and enforceable parts of this Decree.

10 VII. DESIGNATED PROJECT COORDINATORS

11 The project coordinator for Ecology is:

12 Sunny Becker
13 3190 160th Avenue SE
14 Bellevue, WA 98008
15 hlin461@ecy.wa.gov
16 (425) 649-7187

17 The project coordinator for Defendant is:

18 Roy Kuroiwa
19 Port of Seattle
20 2711 Alaskan Way
21 Seattle, WA 98121
22 kuroiwa.r@portseattle.org
23 (206) 787-3814

24 Each project coordinator shall be responsible for overseeing the implementation of this
25 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
26 To the maximum extent possible, communications between Ecology and Defendant and all
documents, including reports, approvals, and other correspondence concerning the activities
performed pursuant to the terms and conditions of this Decree shall be directed through the
project coordinators. The project coordinators may designate, in writing, working level staff

1 contacts for all or portions of the implementation of the work to be performed required by this
2 Decree.

3 Any party may change its respective project coordinator. Written notification shall be
4 given to the other party at least ten (10) calendar days prior to the change.

5 **VIII. PERFORMANCE**

6 All geologic and hydrogeologic work performed pursuant to this Decree shall be under
7 the supervision and direction of a geologist or hydrogeologist licensed by the State of
8 Washington or under the direct supervision of an engineer registered by the State of
9 Washington, except as otherwise provided for by RCW 18.43 and 18.220.

10 All engineering work performed pursuant to this Decree shall be under the direct
11 supervision of a professional engineer registered by the State of Washington, except as
12 otherwise provided for by RCW 18.43.130.

13 All construction work performed pursuant to this Decree shall be under the direct
14 supervision of a professional engineer or a qualified technician under the direct supervision of
15 a professional engineer. The professional engineer must be registered by the State of
16 Washington, except as otherwise provided for by RCW 18.43.130.

17 Any documents submitted containing geologic, hydrologic, or engineering work shall
18 be under the seal of an appropriately licensed professional as required by RCW 18.43
19 and 18.220.

20 Defendant shall notify Ecology in writing of the identity of any engineer(s) and
21 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
22 of this Decree, in advance of their involvement at the Site.

23 **IX. ACCESS**

24 Ecology or any Ecology authorized representative shall have access to enter and freely
25 move about all property at the Site that Defendant either owns, controls, or has access rights to
26 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and

1 contracts related to the work being performed pursuant to this Decree; reviewing Defendant's
2 progress in carrying out the terms of this Decree; conducting such tests or collecting such
3 samples as Ecology may deem necessary; using a camera, sound recording, or other
4 documentary type equipment to record work done pursuant to this Decree; and verifying the
5 data submitted to Ecology by Defendant. Defendant shall make all reasonable efforts to secure
6 access rights for those properties within the Site not owned or controlled by Defendant where
7 remedial activities or investigations will be performed pursuant to this Decree. Ecology or any
8 Ecology authorized representative shall give reasonable notice before entering any Site
9 property owned or controlled by Defendant unless an emergency prevents such notice. All
10 Parties who access the Site pursuant to this section shall comply with any applicable health and
11 safety plan(s) in compliance with Transportation Worker Identification Credential (TWIC)
12 requirements, or will be TWIC escorted. Ecology employees and their representatives shall
13 not be required to sign any liability release or waiver as a condition of Site property access.

14 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

15 With respect to the implementation of this Decree, Defendant shall make the results of
16 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to
17 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology
18 in both printed and electronic formats in accordance with Section XI (Progress Reports),
19 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any
20 subsequent procedures specified by Ecology for data submittal.

21 If requested by Ecology, Defendant shall allow Ecology and/or its authorized
22 representative to take split or duplicate samples of any samples collected by Defendant
23 pursuant to the implementation of this Decree. Defendant shall notify Ecology seven (7) days
24 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,
25 allow Defendant and/or its authorized representative to take split or duplicate samples of any
26 samples collected by Ecology pursuant to the implementation of this Decree, provided that

1 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights
2 under Section IX (Access), Ecology shall notify Defendant prior to any sample collection
3 activity unless an emergency prevents such notice.

4 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be
5 conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be
6 conducted, unless otherwise approved by Ecology.

7 **XI. PROGRESS REPORTS**

8 Defendant shall submit to Ecology written calendar quarterly Progress Reports that
9 describe the actions taken during the previous quarter to implement the requirements of this
10 Decree. The Progress Reports shall include the following:

11 A. A list of onsite activities that have taken place during the quarter;

12 B. Detailed description of any deviations from required tasks not otherwise
13 documented in project plans or amendment requests;

14 C. Description of all deviations from the CAP (Exhibit B) and Scope of Work and
15 Schedule (Exhibit C) during the previous quarter and any planned deviations in the upcoming
16 quarter;

17 D. For any deviations in schedule, a plan for recovering lost time and maintaining
18 compliance with the schedule;

19 E. All quality assurance/quality control reviewed data (including laboratory
20 analyses) received by Defendant during the past quarter and an identification of the source of
21 the sample; and

22 F. A list of deliverables for the upcoming month if different from the schedule.

23 All Progress Reports shall be submitted during the month following completion of a
24 quarter. At Ecology's discretion, the frequency of progress reports may be adjusted. Unless
25 otherwise specified, Progress Reports and any other documents submitted pursuant to this
26

1 Decree shall be sent by certified mail, return receipt requested, to Ecology's project
2 coordinator.

3 **XII. RETENTION OF RECORDS**

4 During the pendency of this Decree, and for ten (10) years from the date this Decree is
5 no longer in effect as provided in Section XXVIII (Duration of Decree), Defendant shall
6 preserve all records, reports, documents, and underlying data in its possession relevant to the
7 implementation of this Decree and shall insert a similar record retention requirement into all
8 contracts with project contractors and subcontractors. Upon request of Ecology, Defendant
9 shall make all records available to Ecology and allow access for review within a reasonable
10 time.

11 Nothing in this Decree is intended by Defendant to waive any right it may have under
12 applicable law to limit disclosure of documents protected by the attorney work-product
13 privilege and/or the attorney-client privilege. If Defendant withholds any requested records
14 based on an assertion of privilege, Defendant shall provide Ecology with a privilege log
15 specifying the records withheld and the applicable privilege. No Site-related data collected
16 pursuant to this Decree shall be considered privileged.

17 **XIII. TRANSFER OF INTEREST IN PROPERTY**

18 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
19 interest in any portion of the Site shall be consummated by Defendant without provision for
20 continued operation and maintenance of any containment system, treatment system, and/or
21 monitoring system installed or implemented pursuant to this Decree.

22 Prior to Defendant's transfer of any interest in all or any portion of the Site, and during
23 the effective period of this Decree, Defendant shall provide a copy of this Decree to any
24 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at
25 least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer.
26 Upon transfer of any interest, Defendant shall notify all transferees of the restrictions on the

1 activities and uses of the property under this Decree and incorporate any such use restrictions
2 into the transfer documents.

3 **XIV. RESOLUTION OF DISPUTES**

4 A. In the event that Defendant elects to invoke dispute resolution, Defendant must
5 utilize the procedure set forth below.

6 1. Upon the triggering event (receipt of Ecology's project coordinator's
7 written decision or an itemized billing statement), Defendant has fourteen (14) calendar
8 days within which to notify Ecology's project coordinator in writing of its dispute
9 (Informal Dispute Notice).

10 2. The Parties' project coordinators shall then confer in an effort to resolve
11 the dispute informally. The parties shall informally confer for up to fourteen (14)
12 calendar days from receipt of the Informal Dispute Notice. If the project coordinators
13 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar
14 days Ecology's project coordinator shall issue a written decision (Informal Dispute
15 Decision) stating: the nature of the dispute; the Defendant's position with regards to
16 the dispute; Ecology's position with regards to the dispute; and the extent of resolution
17 reached by informal discussion.

18 3. Defendant may then request regional management review of the dispute.
19 This request (Formal Dispute Notice) must be submitted in writing to the Northwest
20 Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of
21 Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a
22 written statement of dispute setting forth: the nature of the dispute; the disputing
23 Party's position with respect to the dispute; and the information relied upon to support
24 its position.
25
26

1 4. The Section Manager shall conduct a review of the dispute and shall
2 issue a written decision regarding the dispute (Decision on Dispute) within thirty (30)
3 calendar days of receipt of the Formal Dispute Notice.

4 5. If Defendant finds Ecology's Regional Section Manager's decision
5 unacceptable, Defendant may then request final management review of the decision.
6 This request (Final Review Request) shall be submitted in writing to the Toxics
7 Cleanup Program Manager within seven (7) calendar days of Defendant's receipt of the
8 Decision on Dispute. The Final Review Request shall include a written statement of
9 dispute setting forth: the nature of the dispute; the disputing Party's position with
10 respect to the dispute; and the information relied upon to support its position.

11 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
12 the dispute and shall issue a written decision regarding the dispute (Final Decision on
13 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
14 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
15 disputed matter.

16 B. If Ecology's Final Decision on Dispute is unacceptable to Defendant, Defendant
17 has the right to submit the dispute to the Court for resolution. The Parties agree that one judge
18 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising
19 under this Decree. In the event Defendant presents an issue to the Court for review, the Court
20 shall review the action or decision of Ecology on the basis of whether such action or decision
21 was arbitrary and capricious and render a decision based on such standard of review.

22 C. The Parties agree to only utilize the dispute resolution process in good faith and
23 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
24 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
25 the other party may seek sanctions.
26

1 D. Implementation of these dispute resolution procedures shall not provide a basis
2 for delay of any activities required in this Decree, unless Ecology agrees in writing to a
3 schedule extension or the Court so orders.

4 E. In case of a dispute, failure to either proceed with the work required by this
5 Decree or timely invoke dispute resolution may result in Ecology's determination that
6 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
7 undertaking the work under Section XXV (Implementation of Remedial Action).

8 **XV. AMENDMENT OF DECREE**

9 The project coordinators may agree to minor changes to the work to be performed
10 without formally amending this Decree. Minor changes will be documented in writing by
11 Ecology.

12 Substantial changes to the work to be performed shall require formal amendment of this
13 Decree. This Decree may only be formally amended by a written stipulation among the Parties
14 that is entered by the Court, or by order of the Court. Such amendment shall become effective
15 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld
16 by any party.

17 Defendant shall submit a written request for amendment to Ecology for approval.
18 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
19 written request for amendment is received. If the amendment to the Decree is a substantial
20 change, Ecology will provide public notice and opportunity for comment. Reasons for the
21 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
22 not agree to a proposed amendment, the disagreement may be addressed through the dispute
23 resolution procedures described in Section XIV (Resolution of Disputes).

24 **XVI. EXTENSION OF SCHEDULE**

25 A. An extension of schedule shall be granted only when a request for an extension
26 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the

1 deadline for which the extension is requested, and good cause exists for granting the extension.

2 All extensions shall be requested in writing. The request shall specify:

- 3 1. The deadline that is sought to be extended;
- 4 2. The length of the extension sought;
- 5 3. The reason(s) for the extension; and
- 6 4. Any related deadline or schedule that would be affected if the extension

7 were granted.

8 B. The burden shall be on Defendant to demonstrate to the satisfaction of Ecology
9 that the request for such extension has been submitted in a timely fashion and that good cause
10 exists for granting the extension. Good cause may include, but may not be limited to:

- 11 1. Circumstances beyond the reasonable control and despite the due
12 diligence of Defendant including delays caused by unrelated third parties or Ecology,
13 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
14 documents submitted by Defendant;
- 15 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
16 storm, or other unavoidable casualty; or
- 17 3. Endangerment as described in Section XVII (Endangerment).

18 However, neither increased costs of performance of the terms of this Decree nor
19 changed economic circumstances shall be considered circumstances beyond the reasonable
20 control of Defendant.

21 C. Ecology shall act upon any written request for extension in a timely fashion.
22 Ecology shall give Defendant written notification of any extensions granted pursuant to this
23 Decree. A requested extension shall not be effective until approved by Ecology or, if required,
24 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend
25 this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is
26 granted.

1 D. An extension shall only be granted for such period of time as Ecology
2 determines is reasonable under the circumstances. Ecology may grant schedule extensions
3 exceeding ninety (90) days only as a result of:

4 1. Delays in the issuance of a necessary permit which was applied for in a
5 timely manner;

6 2. Other circumstances deemed exceptional or extraordinary by
7 Ecology; or

8 3. Endangerment as described in Section XVII (Endangerment).

9 **XVII. ENDANGERMENT**

10 In the event Ecology determines that any activity being performed at the Site under this
11 Decree is creating or has the potential to create a danger to human health or the environment,
12 Ecology may direct Defendant to cease such activities for such period of time as it deems
13 necessary to abate the danger. Defendant shall immediately comply with such direction.

14 In the event Defendant determines that any activity being performed at the Site under
15 this Decree is creating or has the potential to create a danger to human health or the
16 environment, Defendant may cease such activities. Defendant shall notify Ecology's project
17 coordinator as soon as possible, but no later than twenty-four (24) hours after making such
18 determination or ceasing such activities. Upon Ecology's direction, Defendant shall provide
19 Ecology with documentation of the basis for the determination or cessation of such activities.
20 If Ecology disagrees with Defendant's cessation of activities, it may direct Defendant to
21 resume such activities.

22 If Ecology concurs with or orders a work stoppage pursuant to this section, Defendant's
23 obligations with respect to the ceased activities shall be suspended until Ecology determines
24 the danger is abated, and the time for performance of such activities, as well as the time for any
25 other work dependent upon such activities, shall be extended, in accordance with Section XVI
26

1 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
2 circumstances.

3 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or
4 contractors to take or require appropriate action in the event of an emergency.

5 **XVIII. COVENANT NOT TO SUE**

6 A. Covenant Not to Sue: In consideration of Defendant's compliance with the
7 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
8 actions against Defendant regarding the release or threatened release of hazardous substances
9 covered by this Decree.

10 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
11 and those hazardous substances that Ecology knows are located at the Site as of the date of
12 entry of this Decree. This Decree does not cover any other hazardous substance or area.
13 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

14 This Covenant Not to Sue shall have no applicability whatsoever to:

- 15 1. Criminal liability;
- 16 2. Liability for damages to natural resources; and
- 17 3. Any Ecology action, including cost recovery, against PLPs not a party to
18 this Decree.

19 If factors not known at the time of entry of this Decree are discovered and present a
20 previously unknown threat to human health or the environment, the Court shall amend this
21 Covenant Not to Sue.

22 B. Reopeners: Ecology specifically reserves the right to institute legal or
23 administrative action against Defendant to require it to perform additional remedial actions at
24 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
25 following circumstances:

- 26 1. Upon Defendant's failure to meet the requirements of this Decree;

1 2. Failure of the remedial action to meet the cleanup standards identified in
2 the Cleanup Action Plan (CAP) (Exhibit B);

3 3. Upon Ecology's determination that remedial action beyond the terms of
4 this Decree is necessary to abate an imminent and substantial endangerment to human
5 health or the environment;

6 4. Upon the availability of new information regarding factors previously
7 unknown to Ecology, including the nature or quantity of hazardous substances at the
8 Site, and Ecology's determination, in light of this information, that further remedial
9 action is necessary at the Site to protect human health or the environment; or

10 5. Upon Ecology's determination that additional remedial actions are
11 necessary to achieve cleanup standards within the reasonable restoration time frame set
12 forth in the CAP.

13 C. Except in the case of an emergency, prior to instituting legal or administrative
14 action against Defendant pursuant to this section, Ecology shall provide Defendant with
15 fifteen (15) calendar days' notice of such action.

16 **XIX. CONTRIBUTION PROTECTION**

17 With regard to claims for contribution against Defendant, the Parties agree that
18 Defendant is entitled to protection against claims for contribution for matters addressed in this
19 Decree as provided by RCW 70.105D.040(4)(d).

20 **XX. LAND USE RESTRICTIONS**

21 In consultation with Defendant, Ecology will prepare the Environmental (Restrictive)
22 Covenant consistent with WAC 173-340-440 and RCW 64.70. After approval by Ecology,
23 Defendant shall record the Environmental (Restrictive) Covenant with the office of the King
24 County Auditor within three (3) months of completion of performance monitoring. The
25 Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as
26

1 | agreed to by Ecology and Defendant. Defendant shall provide Ecology with the original
2 | recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

3 | **XXI. FINANCIAL ASSURANCES**

4 | Pursuant to WAC 173-340-440(11), Defendant shall maintain sufficient and adequate
5 | financial assurance mechanisms to cover all costs associated with the operation and
6 | maintenance of the remedial action at the Site, including institutional controls, compliance
7 | monitoring, and corrective measures.

8 | Within sixty (60) days of the effective date of this Decree, Defendant shall submit to
9 | Ecology for review and approval an estimate of the costs that it will incur in carrying out the
10 | terms of this Decree, including operation and maintenance, and compliance monitoring.

11 | Within sixty (60) days after Ecology approves the aforementioned cost estimate, Defendant
12 | shall provide proof of financial assurances sufficient to cover all such costs in a form
13 | acceptable to Ecology.

14 | Defendant shall adjust the financial assurance coverage and provide Ecology's project
15 | coordinator with documentation of the updated financial assurance for:

16 | A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of
17 | this Decree; or if applicable, the modified anniversary date established in accordance with this
18 | section, or if applicable, ninety (90) days after the close of Defendant's fiscal year if the
19 | financial test or corporate guarantee is used.

20 | B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
21 | approval of a modification or revision to the CAP that result in increases to the cost or
22 | expected duration of remedial actions. Any adjustments for inflation since the most recent
23 | preceding anniversary date shall be made concurrent with adjustments for changes in cost
24 | estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the
25 | anniversary date established under this section to become the date of issuance of such revised
26 | or modified CAP.

1 **XXII. INDEMNIFICATION**

2 Defendant agrees to indemnify and save and hold the State of Washington, its
3 employees, and agents harmless from any and all claims or causes of action (1) for death or
4 injuries to persons, or (2) for loss or damage to property to the extent arising from or on
5 account of acts or omissions of Defendant, its officers, employees, agents, or contractors in
6 entering into and implementing this Decree. However, Defendant shall not indemnify the State
7 of Washington nor save nor hold its employees and agents harmless from any claims or causes
8 of action to the extent arising out of the negligent acts or omissions of the State of Washington,
9 or the employees or agents of the State, in entering into or implementing this Decree.

10 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

11 A. All actions carried out by Defendant pursuant to this Decree shall be done in
12 accordance with all applicable federal, state, and local requirements, including requirements to
13 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
14 federal, state, or local requirements that the agency has determined are applicable and that are
15 known at the time of entry of this Decree have been identified in the List of Applicable or
16 Relevant and Appropriate Requirements (Exhibit E).

17 B. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural
18 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring
19 or authorizing local government permits or approvals. However, Defendant shall comply with
20 the substantive requirements of such permits or approvals. The exempt permits or approvals
21 and the applicable substantive requirements of those permits or approvals, as they are known at
22 the time of entry of this Decree, have been identified in the List of Applicable or Relevant and
23 Appropriate Requirements (Exhibit E).

24 Defendant has a continuing obligation to determine whether additional permits or
25 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
26 action under this Decree. In the event either Ecology or Defendant determines that additional

1 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
2 remedial action under this Decree, it shall promptly notify the other party of this determination.
3 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
4 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly
5 consult with the appropriate state and/or local agencies and provide Ecology with written
6 documentation from those agencies of the substantive requirements those agencies believe are
7 applicable to the remedial action. Ecology shall make the final determination on the additional
8 substantive requirements that must be met by Defendant and on how Defendant must meet
9 those requirements. Ecology shall inform Defendant in writing of these requirements. Once
10 established by Ecology, the additional requirements shall be enforceable requirements of this
11 Decree. Defendant shall not begin or continue the remedial action potentially subject to the
12 additional requirements until Ecology makes its final determination.

13 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
14 exemption from complying with the procedural requirements of the laws referenced in
15 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is
16 necessary for the state to administer any federal law, the exemption shall not apply and
17 Defendant shall comply with both the procedural and substantive requirements of the laws
18 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

19 **XXIV. REMEDIAL ACTION COSTS**

20 Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
21 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
22 or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and
23 Decree preparation, negotiation, oversight, and administration. These costs shall include work
24 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
25 include costs of direct activities and support costs of direct activities as defined in
26 WAC 173-340-550(2). Ecology has accumulated \$10,840.09 in remedial action costs related

1 to this facility as of March 3, 2015. Payment for this amount shall be submitted within thirty
2 (30) days of the effective date of this Decree. For all costs incurred subsequent to March 3,
3 2015, Defendant shall pay the required amount within thirty (30) days of receiving from
4 Ecology an itemized statement of costs that includes a summary of costs incurred, an
5 identification of involved staff, and the amount of time spent by involved staff members on the
6 project. A general statement of work performed will be provided upon request. Itemized
7 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
8 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result
9 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

10 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has
11 authority to recover unreimbursed remedial action costs by filing a lien against real property
12 subject to the remedial actions.

13 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

14 If Ecology determines that the Defendant has failed to make sufficient progress or
15 failed to implement the remedial action, in whole or in part, Ecology may, after notice to
16 Defendant, perform any or all portions of the remedial action or at Ecology's discretion allow
17 the Defendant opportunity to correct. The Defendant shall reimburse Ecology for the costs of
18 doing such work in accordance with Section XXIV (Remedial Action Costs).

19 Except where necessary to abate an emergency situation, Defendant shall not perform
20 any remedial actions at the Site outside those remedial actions required by this Decree, unless
21 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
22 (Amendment of Decree).

23 **XXVI. PERIODIC REVIEW**

24 As remedial action, including groundwater monitoring, continues at the Site, the Parties
25 agree to review the progress of remedial action at the Site, and to review the data accumulated
26 as a result of monitoring the Site as often as is necessary and appropriate under the

1 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
2 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
3 action at the Site. At least ninety (90) days prior to each periodic review, Defendant shall
4 submit a report to Ecology that documents whether human health and the environment are
5 being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII
6 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site
7 under appropriate circumstances. This provision shall remain in effect for the duration of this
8 Decree.

9 **XXVII. PUBLIC PARTICIPATION**

10 A Public Participation Plan is required for this Site. Ecology shall review any existing
11 Public Participation Plan to determine its continued appropriateness and whether it requires
12 amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in
13 conjunction with Defendant.

14 Ecology shall maintain the responsibility for public participation at the Site. However,
15 Defendant shall cooperate with Ecology, and shall:

16 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of
17 public notices and fact sheets at important stages of the remedial action, such as the submission
18 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and
19 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact
20 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

21 B. Notify Ecology's project coordinator prior to the preparation of all press
22 releases and fact sheets, and before major meetings with the interested public and local
23 governments. Likewise, Ecology shall notify Defendant prior to the issuance of all press
24 releases and fact sheets, and before major meetings with the interested public and local
25 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
26 Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to its

1 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored
2 or endorsed by Ecology.

3 C. When requested by Ecology, participate in public presentations on the progress
4 of the remedial action at the Site. Participation may be through attendance at public meetings
5 to assist in answering questions, or as a presenter.

6 D. When requested by Ecology, arrange and/or continue information repositories at
7 the following locations:

- 8 1. Seattle Public Library
9 Beacon Hill Branch
10 2821 Beacon Avenue South
11 Seattle, WA 98144
- 12 2. Ecology's Northwest Regional Office
13 3190 160th Avenue SE
14 Bellevue, WA 98008

15 At a minimum, copies of all public notices, fact sheets, and documents relating to public
16 comment periods shall be promptly placed in these repositories. A copy of all documents
17 related to this Site shall be maintained in the repository at Ecology's Northwest Regional
18 Office in Bellevue, Washington.

19 **XXVIII. DURATION OF DECREE**

20 The remedial program required pursuant to this Decree shall be maintained and
21 continued until Defendant has received written notification from Ecology that the requirements
22 of this Decree have been satisfactorily completed. This Decree shall remain in effect until
23 dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and
24 Section XIX (Contribution Protection) shall survive.

25 **XXIX. CLAIMS AGAINST THE STATE**

26 Defendant hereby agrees that it will not seek to recover any costs accrued in
implementing the remedial action required by this Decree from the State of Washington or any
of its agencies; and further, that Defendant will make no claim against the State Toxics Control

1 Account or any local Toxics Control Account for any costs incurred in implementing this
2 Decree. Except as provided above, however, Defendant expressly reserves its right to seek to
3 recover any costs incurred in implementing this Decree from any other PLP. This section does
4 not limit or address funding that may be provided under WAC 173-322.

5 **XXX. EFFECTIVE DATE**


6 This Decree is effective upon the date it is entered by the Court.

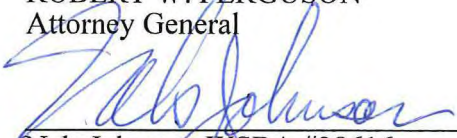
7 **XXXI. WITHDRAWAL OF CONSENT**

8 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
9 at the option of any party and the accompanying Complaint shall be dismissed without costs
10 and without prejudice. In such an event, no party shall be bound by the requirements of this
11 Decree.

12 STATE OF WASHINGTON
13 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

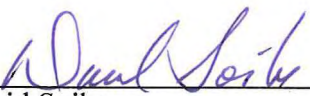
14 
15 James J. Pendowski, Program Manager
16 Toxics Cleanup Program
17 (360) 407-7177


18 Nels Johnson, WSBA #28616
19 Assistant Attorney General
20 (360) 586-3514

21 Date: 6/15/17

22 Date: 7/7/17

23 PORT OF SEATTLE

24 
25 David Soike
26 Interim Chief Executive Officer
(206) 728-3000

Date: 6/1/17

ENTERED this _____ day of _____ 2017.


JUDGE, King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number: 17-2-19080-2
Case Title: Not available at this time

Document Title: DECREE

Signed by: Catherine Shaffer
Date: 7/19/2017 12:19:45 PM

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'Catherine Shaffer' written in a cursive style.

Judge/Commissioner: Catherine Shaffer

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 02A0B1FE28017BAC78E9BF6CE00C462718609D94

Certificate effective date: 7/29/2013 11:40:17 AM

Certificate expiry date: 7/29/2018 11:40:17 AM

Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Catherine
Shaffer:PCh7R3n44hGZOTo3YYhwmw=="